

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2093 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and

MR.JUSTICE S.D.PANDIT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GOVANBHAI JERAMBHAI

Versus

STATE OF GUJARAT

Appearance:

MR D.S.Nanavati for the Petitioner

Mr.Kamal Mehta with Mr.M.R.Anand, for Respondents

CORAM : MR.JUSTICE N.J.PANDYA and

MR.JUSTICE S.D.PANDIT

Date of decision: 19/08/96

ORAL JUDGEMENT (N.J.Pandya,J.)

By filing this petition, the petitioner has challenged acquisition proceedings relating to coastal State Highway when it passes through village Bigari of Gandevi Taluka of Valsad District, particularly with

reference to land bearing Survey No.863/11 and 863/12. The first of the two numbers stands in the joint name of the petitioner and his brother and second survey number still stands in the name of one Lallubhai Manibhai and Jinabhai Makanbhai.

2. The grievance made in the petition is that originally when joint survey was carried out, the road line of the proposed coastal highway did not even touch the petitioner's survey number and under pressures put by a Sarpanch, the road line, as originally proposed, was changed and putting an extra curvature, the proposed coastal highway is shown to be passing through the petitioner's land.

3. In the affidavit-in-reply filed by the Assistant Collector of Navsari, Shri Arvind Agarwal, it is categorically stated that this is not the position. It is stated that the coastal State Highway is passing from Bilimira through the petitioner's village and that has been, right from the beginning, laid down in the manner in which it has been shown in the map annexed to the petition.

4. Before the matter was taken up for final hearing, we wanted to verify the position of the site at present. We have been shown the map of the area indicating that in fact, the coastal highway has been laid out fully and it passes through the petitioner's land to the extent possible. This situation has arisen because there is a superstructure existing in the land which belongs to the petitioner. Because of the interim orders of this Court, while laying down the road, care has been taken to see that the superstructure is not disturbed. The map shows two superstructures, one coming almost to the middle of the road, reducing the width of the road to half and the other superstructure is also abutting the road upto 1/4th, if not more.

5. It is significant to note that, from the stage of publication of Section 4 Notification to stage of Sec.9(1)(2) Notification and subsequently even at the stage of individual Notice under Sec.9(3)(4) the petitioner did not raise any objection and only when the award came to be passed, the petitioner has filed the present petition. It seems to be more of a subjective feeling on the part of the petitioner and there being no material to establish his allegations objectively, we do not see any merit in the case.

6. The other side was willing to consider the request of the petitioner that if possible the structure may be saved. However, looking to the road-line already laid down at the site, it is not possible to leave the superstructure in tact. The consequence of the acquisition, therefore, should follow. The consequence will be, alongwith the land the superstructure will also go as it very much forms part of the award and the possession of the acquired area has been taken over by the concerned authorities, but for which, the road could not have been laid down.

7. All told therefore, we do not find any substance in the matter. The petition is dismissed. Interim relief is vacated. The petitioner is granted time upto 31st October 1996 to remove his belongings and is also permitted to pull down the superstructure himself, failing which, it shall be open to the authorities to pull down the structure and complete the proceedings. Rule is discharged. No order as to costs.
